BORA LASKIN LAW LIBRARY
3 1761 04855 7177

CONSTITUTIONAL THEORY

David Beatty
Alan Brudner

FACULTY OF LAW
UNIVERSITY OF TORONTO

These materials are reproduced solely for the use of students in the Faculty of Law, University of Toronto.

2000 - 2001

CONSTITUTIONAL THEORY

David Beatty

Alan Brudner

FACULTY OF LAW
UNIVERSITY OF TORONTO

These materials are reproduced solely for the use of students in the Faculty of Law, University of Toronto.

2000 - 2001

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/constitutionalth00beat

TABLE OF CONTENTS

Canadian Charter of Rights and Freedoms (excerpt) 1

Chapter One: Originalism and its Critics

R.H. Bork, Neutral Principles and Some First Amendment Problems 6

M.J. Perry, The Legitimacy of Particular Conceptions of Constitutional Interpretation 20

R. Dworkin, A Matter of Principle (excerpt) 36

Reference Re Section 94(2) of the Motor Vehicle Act, (B.C.) 51

Chapter Two: Neutral Principles and Interpretive Communities

H. Wechsler, Toward Neutral Principles of Constitutional Law 54

D. Beatty, The Theory of Constitutional Law (excerpts) 64

O. Fiss, Objectivity and Interpretation 98

Chapter Three: Process Based Theory

J.H. Ely, Democracy and Distrust (excerpt) 107

P. Monahan, Politics and the Constitution (excerpt) 117

R. Dworkin, A Matter of Principle (excerpt) 148

L. Tribe, The Puzzling Persistence of Process-Based Constitutional Theories 158

Reference re Motor Vehicle Act, B.C. 167

Chapter Four: Law as Integrity

R. Dworkin, Law's Empire (excerpts) 169

Chapter Five: Utilitarianism

J. Bentham, Principles of Morals and Legislation (excerpt) 212

J.S. Mill, Utilitarianism (excerpt).....218

D. Lyons, Ethics and the Rule of Law (excerpt).....231

L.W. Sumner, The Moral Foundation of Rights (excerpt)..... 235

R. v. Oakes (excerpt).....251

Chapter Six: Classical Natural Law

H.B. Veatch, Human Rights, Fact or Fancy? (excerpt).....255

Chapter Seven: The Priority of the Right-- I.

Immanuel Kant, Foundations of the Metaphysics of Morals.....288

J. Rawls, Political Liberalism (excerpt).....297

Chapter Eight: The Priority of the Right-- II.

J. Rawls, The Basic Liberties and Their Priority.....331

R. Dworkin, Freedom's Law (excerpt).....367

Chapter Nine: Communitarianism

Michael Sandel, Liberalism and the Limits of Justice.....392

Michael McDonald, Should Communities Have Rights?
Reflections on Liberal Individualism.....399

Will Kymlicka, Liberalism, Community and Culture.....413

Chapter Ten: Skeptical Approaches

A. Hutchinson, Waiting for Coraf: A Critique of Law and Rights (excerpt).....432

C. Sunstein, One Case at a Time (excerpt).....451

Richard A. Posner, Against Constitutional Theory.....485

Chapter Eleven: Free Expression

J.S. Mill, On Liberty (excerpt) 495

J. Rawls, The Basic Liberties and Their Priority 507

R. Dworkin, A Matter of Principle (excerpt) 529

The Queen v. Keegstra 541

Chapter Twelve: Equality

A. Brudner, What Are Reasonable Limits to Equality Rights 562

Law Society of B.C. v. Andrews 585